

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF NEW MEXICO

3 -----
4 UNITED STATES OF AMERICA,) No. 1:18-CR-03475-WJ
5)
6 Plaintiff,)
7 vs.) Pete V. Domenici U.S. Courthouse
8) Cimarron Courtroom
9) Albuquerque, New Mexico
10) Tuesday, March 10, 2020
11) 9:30 A.M.
12)
13 Defendant.)
14 -----

15 TRANSCRIPT OF PROCEEDINGS
16 HEARING RE: DEFENDANT'S MOTION FOR
17 SUPPRESSION OF EVIDENCE (Doc. 39)
18 BEFORE THE HONORABLE WILLIAM P. JOHNSON
19 CHIEF UNITED STATES DISTRICT JUDGE

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I N D E X

Page

CLOSING ARGUMENT BY THE GOVERNMENT - MR. OUTLER	58
CLOSING ARGUMENT BY THE DEFENSE - MS. RIVAS	62
REBUTTAL ARGUMENT BY THE GOVERNMENT - MR. OUTLER	67

W I T N E S S E S

JOHN MONTOYA	
CROSS-EXAMINATION BY MS. RIVAS	15
REDIRECT EXAMINATION BY MR. OUTLER	25
CHARLES CHAVEZ	
DIRECT EXAMINATION BY MR. OUTLER	27
CROSS-EXAMINATION BY MS. RIVAS	35
REDIRECT EXAMINATION BY MR. OUTLER	37
RECROSS-EXAMINATION BY MS. RIVAS	39
QUESTIONS BY THE COURT	41
ZAKKERY FOSTER	
DIRECT EXAMINATION BY MR. OUTLER	43
CROSS-EXAMINATION BY MS. RIVAS	52
QUESTIONS BY THE COURT	56

EXHIBITS FORMALLY MARKED/IDENTIFIED

No.		Page
Government Ex. 3	Officer Montoya's Lapel Video	14
	(Ex. 4 in Response to Motion by USA - Doc. 47)	
Government Ex. 5	Officer Chavez's Lapel Video	34
	(Ex. 5 in Response to Motion by USA - Doc. 47)	
Government Ex. 6	Officer Foster's Lapel Video	51
	(Ex. 6 in Response to Motion by USA - Doc. 47)	
Defense Ex. B, C, D	Photographs	18

* * * * *

1 (In Open Court at 9:38 A.M.)

2 THE COURT: All right. We're in session in the case
3 of the United States vs. Robert Dunsworth, 18-CR-3475.

4 would counsel enter their appearances for the record,
5 please.

6 MR. OUTLER: Good morning, Your Honor. Tom Outler
7 for the United States. With me at counsel table is Jack
8 Burkhead, and also a special agent with the ATF, Sam Supnik.

9 MS. RIVAS: Good morning, Your Honor. Irma Rivas on
10 behalf of Mr. Dunsworth, who is present in custody this
11 morning. Also present this morning is our student, Lidiya
12 Bayliyeva, who appears with the Court's permission. She does
13 ask to be excused at about 10:15.

14 THE COURT: Sure, that's fine.

15 MS. RIVAS: Thank you.

16 THE COURT: This is set today on the Defendant's
17 Motion to Suppress. I've reviewed the matters. Do counsel
18 want to go ahead and proceed with testimony?

19 MR. OUTLER: We do, Your Honor. The United States is
20 ready to proceed. I do want to point out one mistake that I
21 made in the briefing for the Court.

22 There are three police officers involved in this
23 case, John Montoya, Charles Chavez and Zakkery Foster. The
24 Court will hear from all three of these officers today and
25 watch portions of their lapel videos. I made the mistake of

1 attributing some of the actions of John Montoya to Charles
2 Chavez and vice versa in the brief. After this hearing, I'll
3 be happy to submit a corrected version of the brief if that
4 will help the Court. But the Court will hear from all three of
5 these witnesses today.

6 THE COURT: Okay.

7 MR. OUTLER: Thank you. If the Court is ready, we'll
8 call our first witness.

9 THE COURT: Sure. And then, are the witnesses
10 outside?

11 MR. OUTLER: The witnesses are all three outside,
12 yes.

13 THE COURT: Do you want the Rule invoked?

14 MS. RIVAS: Yes, Your Honor.

15 THE COURT: All right, that's fine. Then just as
16 they're ready to testify, they can come into the courtroom.

17 MR. OUTLER: The United States first calls John
18 Montoya.

19 MR. GARCIA: Good morning, sir. Please raise your
20 right hand.

21 (JOHN MONTOYA, GOVERNMENT WITNESS, SWORN)

22 MR. GARCIA: Please have a seat and state your full
23 name for the record.

24 THE WITNESS: My name is John Montoya.

25 THE COURT: Counsel may proceed.

1 DIRECT EXAMINATION

2 BY MR. OUTLER:

3 Q. Mr. Montoya, what do you do for a living?

4 A. I just recently retired from the Albuquerque Police
5 Department.

6 Q. All right. Were you still employed at the Albuquerque
7 Police Department on June 25, 2018?

8 A. Yes.

9 Q. At that time, approximately how long had you been on the
10 force?

11 A. Roughly 17 years.

12 Q. All right. We're here today in court to talk about a call
13 for service and an arrest on June 25, 2018. Do you recall that
14 call for service and arrest?

15 A. Yes.

16 Q. You were present there?

17 A. That's correct.

18 Q. How many other officers were also present?

19 A. There were two others.

20 Q. Who were they?

21 A. Officer Charles Chavez and Recruit Officer Zak Foster.

22 Q. When you say recruit officer, what do you mean?

23 A. He was in training with me. I was his Field Training
24 officer.

25 Q. Okay. So you were riding in the same vehicle?

1 A. That's correct.

2 Q. And how did the incident on June 25, 2018, start?

3 A. We had a call for service. The caller indicated that
4 there was an RV parked on the street. It had been there for
5 more than three days. There was also a motorcycle on the
6 sidewalk blocking the sidewalk.

7 Q. Okay. So your purpose there was?

8 A. To get this individual moving along. We'd been having
9 problems in the Southeast with RVs parking on the side of
10 businesses, and the Southeast Area Command was pretty strong
11 that we need to get these individuals moving.

12 Q. Okay. I believe you said you arrived on the scene with
13 Officer Foster in the same vehicle?

14 A. That's correct. He was driving, I was riding passenger.

15 Q. Okay. And Officer Chavez arrived in a separate vehicle?

16 A. That's correct.

17 Q. What did you see when the three of you arrived?

18 A. We parked south of the RV. We saw the RV. I saw the
19 motorcycle on the sidewalk. There was also some debris, I
20 think it was a ladder, laying out on the sidewalk, also,
21 between the RV and the motorcycle.

22 Q. Okay. Given what you saw there at the scene, what was the
23 outcome that you needed to achieve?

24 A. Get the individual moving along.

25 Q. So what if you had not found an individual there?

1 A. What if I would have not found? I was most likely going
2 to have to tow everything that I see there.

3 Q. And why is that?

4 A. The motorcycle is blocking the sidewalk. The RV there, it
5 looks like somebody has already set up camp, so it's illegal to
6 be living out of an RV on the street. If there's no individual
7 around, I'm going to have to tow it, most likely.

8 Q. Okay. So one way or another, you could not -- the police
9 officers could not leave that scene until arrangements were
10 made to move that vehicle, or move both the truck and the
11 trailer and the motorcycle?

12 A. That's correct.

13 Q. So what are your options for moving a vehicle like that,
14 or vehicles?

15 A. We can try to find the owner to the RV and make
16 arrangements for them to get down there and have the RV towed,
17 or we can tow it ourselves. We can also -- typically if I get
18 a call that there's a car parked on the street and the caller
19 says, it just arrived there, maybe I might put a red tag on it
20 and let that individual, let the owner of the vehicle know that
21 the police were here, just please move the vehicle. But this
22 vehicle was sitting there for so long that we needed to take
23 some kind of law enforcement action, and we can call for a tow
24 truck and get it towed.

25 Q. Okay. If you do wind up towing, what procedure do you

1 have to follow to do that?

2 A. We need to try to find the owner. We need to try to -- if
3 we're going to tow it, we need to do some type of inventory of
4 the vehicle, and whatever we decide to collect and tag for
5 safekeeping, we tag it and then we have the vehicle towed. We
6 don't want anything inside of the vehicle getting into the
7 wrong hands.

8 Q. Okay. I believe you started to explain this, but what's
9 the purpose of doing an inventory of what's in the vehicle?

10 A. Just to secure the property that's in -- secure the
11 owner's property.

12 Q. And is it mandatory that you do some sort of inventory
13 search prior to towing?

14 A. Yes. It's in our SOP.

15 Q. Okay. So you've described what you first saw and then the
16 outcome that you needed to achieve, moving the vehicles on. As
17 you approached the trailer, what did you see?

18 A. Like I said, the motorcycle, the ladder. I saw that the
19 door to the trailer was ajar. It wasn't fully shut. And the
20 RV seemed to be connected to a pickup, and that was my first
21 initial scene.

22 Q. Okay. What then did you or any of the other officers do?

23 A. Well, since -- well, now, Officer Foster was a recruit. I
24 waited to see what kind of decision-making he was going to
25 make. He decided to knock on the trailer, knock on the door,

1 to try to get somebody's attention.

2 Q. So what happened after he knocked on the door?

3 A. He knocked on the door once. Nobody came to the door. He
4 knocked on the door twice and nobody came to the door. And
5 then I saw a little bit of hesitation in him, so I kind of took
6 the initiative and I walked up to the door and opened the door.

7 Q. All right. So when he knocked on the door, did he say
8 anything?

9 A. He said -- yeah. He said: "This is the Albuquerque
10 Police Department."

11 Q. All right. And so after the second time that he knocked
12 on the door and said, Albuquerque Police Department, how much
13 time went by before you approached and also knocked?

14 A. Less than a minute, I would say.

15 Q. Okay. And I believe you said you went to the trailer and
16 opened the door. Did you say anything or knock on the door,
17 yourself?

18 A. No, sir. I just opened the door.

19 Q. And you said the door was partially open at that point?

20 A. Yeah, it's partially open.

21 Q. Could you see inside the trailer?

22 A. No, I couldn't see in at that point.

23 Q. All right. Why did you open that door.

24 A. I wanted to see if somebody was really inside the trailer.

25 If nobody's there, like I said, we're going to have to tow it,

1 and I can't be towing vehicles with individuals still inside
2 the trailer, in the RV.

3 Q. So you were -- at that point, you still believed that if
4 nobody was home, you were going to have to tow this vehicle?

5 A. That's correct.

6 Q. Is it fair to say you were, by pushing the door open, you
7 were simply trying to confirm that nobody was, in fact, home?

8 A. That's correct.

9 Q. What did you see when you pushed open that door?

10 A. There was a bed right next to the door. So I saw an
11 individual laying down in bed, and I called out to him and I
12 asked him to step out of the RV.

13 Q. Did you ever enter the trailer?

14 A. No, sir.

15 Q. Was the person you saw in the trailer alone?

16 A. He said he was alone -- no. He said he was there with his
17 wife. I asked him to step out and I asked him what his wife's
18 name was. I don't remember what it was. I called out from
19 outside, I called out, but nobody answered.

20 Q. At any time, did you ever enter the trailer, itself?

21 A. No, not that I recall, no.

22 Q. Did you even stick your head back in there or say anything
23 further?

24 A. No. I had an individual outside and I had a recruit, so
25 now my focus was back on the individual who I asked to step

1 out.

2 Q. Okay. So as the man stepped out, describe the contact
3 that police had with him at that point.

4 A. We asked him his name. He gave us his name. I think he
5 did produce a driver's license, also.

6 Q. Do you remember the name he gave you?

7 A. I do not remember. I think the last name was Dunsworth.
8 I don't recall the first name.

9 Q. So he gave you his name, he produced an ID. What happened
10 next?

11 A. Then, as we typically do, we run all individuals through
12 NCIC, checking for warrants. I think my recruit checked him
13 for warrants. He did have a warrant. After we confronted him
14 about it, Mr. Dunsworth about that warrant, he said, yeah, I
15 think I do have warrants. And at that time the individual was
16 placed under arrest.

17 Q. Okay. Did the fact that you arrested this individual
18 change the outcome that you had to achieve with the vehicle,
19 itself?

20 A. No. Now it's -- it's solidified now. Unless I find
21 somebody that can come down there immediately and pick up that
22 RV, then now I have to tow the vehicle.

23 Q. Was there any attempt to find somebody else to come and
24 move that vehicle?

25 A. Yeah. He did give a name of I think his girlfriend or

1 wife. I don't remember. He did give us a name, and we tried
2 to get a phone number. He said it was on his phone. We asked
3 him if we could -- we asked him where the phone was, and he
4 said it was inside the trailer. We asked him if we could go
5 inside the trailer, and he said, yes. He was also wanting a
6 shirt and boots. He didn't have a shirt on. It was still kind
7 of cold during that time, and he wanted a shirt and boots, and
8 then the phone so that we could get the phone number from the
9 phone.

10 Q. Okay. So the man is outside, and he first asked you for
11 some articles of clothing that he says are still inside the
12 trailer; is that right?

13 A. That's correct.

14 Q. And you asked if you could retrieve the clothing from the
15 trailer?

16 A. That's correct.

17 Q. And he says yes?

18 A. That's correct.

19 Q. So one officer goes in and retrieves the clothing from the
20 trailer?

21 A. That's correct.

22 Q. All right. And then around the same time, or a little bit
23 later, you're asking how you can get in contact with his wife
24 or girlfriend?

25 A. Right. And -- go ahead; I'm sorry.

1 Q. Well, no, you tell me.

2 A. That's when we asked for his phone. He said, I can get
3 the phone number from my phone. We asked where the phone was,
4 and he said it was inside underneath a jacket or on the bed
5 somewhere. We asked if we could go in and retrieve the phone
6 so we can get ahold of somebody that can come and get the RV.
7 Officer Chavez found the phone, handed it over to
8 Mr. Dunsworth, and that's when he gave us the phone number.

9 Q. You just said Officer Chavez found the phone. It was not
10 you who went into the trailer to get either the clothing or
11 find the phone; is that right?

12 A. No. No, I didn't even know that there was anything like
13 that in there.

14 Q. You've already told us, I believe, that you never went
15 into the trailer. Did you have any reason -- or did you
16 actually go into the trailer at any point after this, after the
17 man was already under arrest?

18 A. I don't think I went into the trailer after. Not that I
19 recall, that I went into the trailer.

20 Q. Okay. At this point, now that the man is under arrest,
21 you still have to find some way to move this vehicle, and
22 that's either going to be by finding another person to come
23 move it or to tow it?

24 A. That's correct.

25 MR. OUTLER: Your Honor, at this point I'd like to

1 play portions of the video from Officer Montoya.

2 (Whereupon Officer Montoya's Lapel Video played)

3 MR. OUTLER: Your Honor, I'll stop the video there.

4 The Court will have an opportunity to see the videos from
5 Officer Chavez, who is standing next to the trailer at this
6 point, and Officer Foster. The audio on Officer Foster's lapel
7 camera video is much clearer. You can hear the conversation
8 between Officer Foster and the Defendant. And then Officer
9 Chavez's video shows you later his entry into the trailer to
10 retrieve the clothing, and then later the phone.

11 BY MR. OUTLER:

12 Q. Officer Montoya, having seen this here, can you confirm
13 that this was the lapel video from your lapel camera?

14 A. That's correct, it is.

15 MR. OUTLER: Your Honor, at this point I'd move
16 admission of this video, which has already been marked I
17 believe as Exhibit 3 to the Motion and submit it to the Court.

18 THE COURT: Any objection?

19 MS. RIVAS: No, Your Honor.

20 THE COURT: It's admitted.

21 (Government Exhibit No. 3 admitted.)

22 BY MR. OUTLER:

23 Q. Having watched this video, is there anything you want to
24 add or clarify from your testimony earlier?

25 A. No, sir, there isn't.

1 Q. Okay, thank you.

2 MR. OUTLER: Thank you, Your Honor. I'll pass the
3 witness.

4 THE COURT: Counsel may cross-examine.

5 MS. RIVAS: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MS. RIVAS:

8 Q. Good morning.

9 A. Good morning.

10 Q. You just testified that towing the vehicle was most
11 likely, in your words?

12 A. Yes, ma'am, I did.

13 Q. In fact, in this case, the trailer was not towed?

14 A. No.

15 Q. You had no personal knowledge how long that trailer had
16 been there?

17 A. Only from what was indicated by the caller.

18 Q. So you had no personal knowledge how long it had been
19 there?

20 A. No, no.

21 Q. You said that you -- you just testified that an inventory
22 search was mandatory. But there was not one done here?

23 A. No, because --

24 Q. Thank you.

25 We just observed the video. You said that you believed

1 that Mr. Dunsworth produced an identification card?

2 A. I thought -- that's my memory of it. I thought he did
3 produce an ID card.

4 Q. So viewing the video, is that still correct?

5 A. I think so. I think an ID was produced later.

6 Q. When?

7 A. I think after he retrieved more items. That's just my
8 memory of it. There was an ID that was produced later on.

9 Q. You indicated that you would have to tow it until you
10 could find the owner.

11 A. That's correct. Or a responsible person that this
12 individual would allow to come and pick it up.

13 Q. When -- and perhaps we need to play a few more minutes on
14 this video, but when Mr. Dunsworth asked for a shirt, your
15 response is: "My partner can get it for you"?

16 A. That's correct.

17 Q. It wasn't -- he never said, yes?

18 A. I asked him permission, for his permission to go in and
19 get his shirt and boots, and he gave us permission.

20 Q. So regarding his shirt, he didn't use the word "yes"?

21 A. I don't know exactly what the words were.

22 Q. You just testified that he described that his phone was in
23 his jacket?

24 A. No, not in his jacket, near it or underneath his jacket.

25 I don't recall.

1 Q. Did you hear that on this video?

2 A. I don't recall. We'd have to play it.

3 Q. Play it a little bit longer? Did he describe what the
4 jacket looked like?

5 A. I don't recall if he did describe it.

6 Q. And did he describe where it was?

7 A. I think he said it was on the bed, or near the bed. That
8 conversation, I think, was more with Officer Chavez than it was
9 with me.

10 Q. When you approached the trailer, you didn't see
11 Mr. Dunsworth outside the trailer?

12 A. No, ma'am, I did not.

13 Q. And we just saw the video and you couldn't see inside the
14 windows of the trailer?

15 A. No, ma'am, you couldn't.

16 Q. I'd like to show what you would like to mark as
17 Exhibits B, C and D. And we have copies for the court and for
18 opposing counsel.

19 MS. RIVAS: May I approach, Your Honor?

20 THE COURT: Sure.

21 BY MS. RIVAS:

22 Q. I'm going to hand you three pictures.

23 Have you had a chance to look at them?

24 A. Yes.

25 Q. Do those -- to your memory, is that what you saw that

1 morning?

2 A. Yes, it looks like it.

3 Q. And it shows there that you could not see through the
4 windows?

5 A. That's correct.

6 THE COURT: Are you offering these?

7 MS. RIVAS: Your Honor, yes. We'd ask that they be
8 admitted into evident.

9 THE COURT: Any objection?

10 MR. OUTLER: No objection.

11 THE COURT: They will be admitted as Exhibits B, C
12 and D for purposes of this hearing.

13 MS. RIVAS: Thank you.

14 (Defense Exhibits No. B, C and D admitted.)

15 BY MS. RIVAS:

16 Q. When you approached the trailer -- let's take a look at
17 Exhibits C and D. That door was closed?

18 A. No, you can see that it -- like in C, both C and D, you
19 can see that it's ajar.

20 Q. Can you see through that? Is there a gap?

21 A. No, there's no gap. But you said that the door was
22 closed.

23 Q. Closed.

24 A. Okay, it's not locked, but it's -- it's ajar.

25 Q. So that door to you is ajar?

1 A. Yes. I cannot see into the trailer, but it's open. It's
2 ajar.

3 Q. When you opened the door to the trailer, you didn't have a
4 search warrant?

5 A. No, ma'am, I did not.

6 Q. And the bench warrant wasn't discovered until Officer
7 Foster asked Mr. Dunsworth for his identifiers?

8 A. I think that's correct.

9 Q. You did ask Mr. Dunsworth to step out? You asked him to
10 step out, sir?

11 A. That's correct.

12 Q. But before he stepped out, he asked you permission to put
13 on his pants?

14 A. I think that's -- yeah, I think I heard it in the video
15 now. I think he did ask to put on some clothes, yeah.

16 Q. And he only began to put on his pants after you gave him
17 permission?

18 A. After I gave him permission, okay, yes.

19 Q. He stepped outside, and he didn't have shoes with him?

20 A. No, ma'am.

21 Q. And he didn't have shoes on?

22 A. No, he didn't have shoes on.

23 Q. He didn't have a shirt on?

24 A. That's correct.

25 Q. And you never gave Mr. Dunsworth a Miranda warning?

1 A. Not that I recall, ma'am.

2 Q. But you started asking him about his bruises on his
3 stomach?

4 A. I just -- yes. Yes, I did.

5 Q. There were three officers there that day?

6 A. Yes, ma'am.

7 Q. In fact, Mr. Dunsworth asked you, in his words, "why did
8 you come all strong"?

9 A. I don't recall that, ma'am.

10 Q. He asked why there was three of you there that day?

11 A. I don't recall that. But like I explained, Officer Foster
12 and I were in -- he was in training and I was his Field
13 Training Officer. That was the only reason. Or we would have
14 gone with just two officers.

15 Q. But there were three of you there that day?

16 A. That's correct, ma'am.

17 Q. And you were standing around him?

18 A. Yes, ma'am.

19 Q. Officer Chavez was by the door of the trailer?

20 A. Yes, ma'am.

21 Q. And you were behind him?

22 A. Behind who?

23 Q. Behind Mr. Dunsworth. You were standing behind him?

24 A. At what point?

25 Q. You were standing south on the sidewalk?

1 A. Yes.

2 Q. Behind Mr. Dunsworth?

3 A. Yes, ma'am.

4 Q. And Officer Foster was standing in front of him?

5 A. Standing on the street parallel with me.

6 Q. When Officer Chavez is asking Mr. Dunsworth about the
7 location of the phone, Officer Foster is handcuffing him?

8 A. I don't know at what point those two events happened.

9 Q. Do you remember the series of questions that Officer
10 Chavez asked him?

11 A. I do not, ma'am.

12 Q. You don't remember that he asked him, in quick sequence,
13 "Is it in the nightstand"?

14 A. I don't recall that.

15 Q. "Is it on the floor"?

16 A. I don't recall that.

17 Q. "Is it in a backpack"?

18 A. I don't recall that.

19 Q. "She wouldn't have the phone"?

20 A. I don't recall that.

21 Q. "She has her own phone"?

22 A. I'd be pushing it if I said -- I don't recall that,
23 either.

24 Q. And you'd never met Mr. Dunsworth, so you didn't know what
25 he looked like?

1 A. No, ma'am.

2 Q. You didn't know if anyone was in the trailer?

3 A. No, I didn't. He said that his wife was in the trailer,
4 but then said maybe she went to the store. But I still didn't
5 know if anybody else was in there.

6 MS. RIVAS: Your Honor, if I could have a minute.

7 THE COURT: Certainly.

8 BY MS. RIVAS:

9 Q. Officer, I'm going to present to you what we have
10 submitted as Exhibit A, and opposing counsel and the Court
11 should have a copy.

12 MS. RIVAS: If I may approach.

13 THE COURT: You may.

14 BY MS. RIVAS:

15 Q. Is that the warrant that caused Mr. Dunsworth to be
16 arrested that day?

17 A. I would assume it is. Daniel Dunsworth. I would have to
18 assume it was. I think it was a misdemeanor warrant -- yeah,
19 traffic. I would think it is.

20 Q. So that warrant was from a traffic ticket?

21 A. That's correct.

22 Q. So a traffic ticket, and he failed to show up to court?

23 A. I wouldn't know. Oh, you mean on this one? That's what
24 created this warrant?

25 Q. Yes.

1 A. Does it have FTA? Yeah, it would be, most likely, yeah.

2 Q. And you don't know -- most likely if it's traffic, he
3 wouldn't have been arrested when those tickets were issued?

4 A. When the tickets were issued themselves?

5 Q. Yes.

6 A. No, you just issue a ticket.

7 Q. Okay. And that warrant describes Daniel Dunsworth as
8 being 5'9", brown eyes, 180 pounds, born in 1959?

9 A. Yes, ma'am.

10 Q. That could be a lot of people?

11 A. It could be a lot of people, yeah. Just by those minimal
12 descriptors, yeah, it could be.

13 Q. And when you approached, you didn't find Mr. Dunsworth
14 driving the vehicle?

15 A. No, ma'am.

16 Q. You had the option of just citing the vehicle, you
17 testified earlier, and just placing a red tag on the vehicle --

18 A. Yes.

19 Q. -- if you didn't find a driver?

20 A. Yes. But like I said, in the Southeast, this happens
21 quite a bit, and the Southeast Area Command wanted us to get
22 these individuals moving. A lot of the times we find drug
23 activity going on inside these RVs that are parked with
24 individuals. So businesses complain, and they want us to get
25 them moving, get them going.

1 Q. But that was an option available to you, to just red tag
2 it?

3 A. Yes, that could have been an option. But the reason I
4 didn't do it in this case is because the caller stated that it
5 had been there for a while, and by the looks of the motorcycle
6 and the ladder there, this individual, it looked like he had
7 set up camp.

8 Q. But you had no personal knowledge how long he had been
9 there?

10 A. No, ma'am, I did not.

11 Q. You don't know Sharon Dunsworth, Mr. Dunsworth's wife?

12 A. No, ma'am. No, I don't have any personal -- I don't know
13 her personally.

14 Q. You don't know how long she had been gone?

15 A. No, ma'am.

16 Q. Or if she was on her way back?

17 A. No. What we ended up doing is taking Mr. Dunsworth to
18 jail --

19 Q. Thank you, Officer.

20 so you didn't know if she was on her way back?

21 A. No, ma'am.

22 Q. Thank you. In fact, between the officers, you also
23 discussed maybe seeking Mr. Dunsworth's sister to maybe pick up
24 the trailer?

25 A. I don't recall that.

1 Q. And in this case, the trailer was not towed?

2 A. No, ma'am. But there was a reason.

3 Q. And no inventory search?

4 A. No, ma'am, not that I know of.

5 MS. RIVAS: Thank you.

6 THE COURT: Is there redirect?

7 MR. OUTLER: Briefly, Your Honor. Thank you.

8 REDIRECT EXAMINATION

9 BY MR. OUTLER:

10 Q. Officer Montoya, why was the vehicle not towed?

11 A. Because -- so, we took Mr. Dunsworth to the Southeast
12 Substation for processing before we go to jail. We left
13 Officer Chavez in charge of the scene. Mr. Dunsworth gave us a
14 phone number, and Officer Chavez was trying to make the phone
15 calls. I think he got a voice mail. But later it was found
16 out, we did get ahold of somebody and they did come down to the
17 scene.

18 Q. All right. If Officer Chavez had not been able to get in
19 touch with the girlfriend or wife, or anybody else to come move
20 the vehicle, what would have happened?

21 A. Yeah, before we left, I said, if you can't get ahold of
22 anybody, Charles, we're going to have to tow it.

23 Q. And if you had towed it, you would have done an inventory
24 search?

25 A. That's correct, sir.

1 Q. When you opened the door to that trailer, did you see a
2 firearm?

3 A. No. No, sir.

4 Q. Did you retrieve anything from the trailer?

5 A. No, sir.

6 Q. So the only thing of significance you saw was
7 Mr. Dunsworth, himself?

8 A. Yeah. And that's when I asked him to step out.

9 MR. OUTLER: Thank you. That's all I have, Your
10 Honor.

11 THE COURT: May the witness be excused?

12 MS. RIVAS: Yes, Your Honor.

13 THE COURT: Thank you. You're free to leave, sir.

14 THE WITNESS: Thank you, Your Honor.

15 MR. OUTLER: Your Honor, may Officer Montoya remain
16 in the courtroom while the other officers testify?

17 THE COURT: Yes. If he's concluded his testimony, he
18 may.

19 MR. OUTLER: Thank you.

20 THE COURT: Who is the next witness?

21 MR. OUTLER: Next, the United States calls Officer
22 Charles Chavez.

23 MR. GARCIA: Good morning, sir. Please raise your
24 right hand.

25 (CHARLES CHAVEZ, GOVERNMENT WITNESS, SWORN)

1 MR. GARCIA: Please have a seat and state your full
2 name for the record.

3 THE WITNESS: My name is Charles Chavez, retired
4 Albuquerque Police Officer.

5 THE COURT: You may proceed.

6 DIRECT EXAMINATION

7 BY MR. OUTLER:

8 Q. Officer, or former Officer Chavez, on June 25, 2018, were
9 you still employed as an Albuquerque police officer?

10 A. Yes. Yes, I was a full-time Albuquerque police officer in
11 uniform driving a marked police car.

12 Q. All right. At that time, how long had you been an officer
13 with APD?

14 A. You said -- I think about 18 years, because it was 2018,
15 and I started in 2000.

16 Q. And when did you retire?

17 A. About a year ago last March. So 2019, March of 2019.

18 Q. All right. We are talking about the incident that
19 happened with the Defendant on June 25, 2018. Were you present
20 at that scene?

21 A. Yes.

22 Q. Why were you there?

23 A. I was responding to a dispatched call for service. It was
24 dispatched through our computer. I can't remember if it was
25 dispatched over radio, but I know it was dispatched at least by

1 computer to us.

2 Q. So you received a call directly, or were you there just as
3 backup?

4 A. Two officers or police cars were dispatched, and my role
5 was assigned as a backup officer. When the dispatch occurs,
6 they assign one as a backup and one as the primary
7 report-writing officer.

8 Q. Okay. Who was the primary report-writing officer?

9 A. I believe it was Officer Zak, or Zakkery Foster.

10 Q. Who was the other officer there?

11 A. Officer John Montoya was with Officer Foster in the same
12 vehicle.

13 Q. All right. When you arrived at the scene, what did you
14 see?

15 A. I did see on Virginia, S.E., Virginia Street, I did see a
16 camper attached to a vehicle, just as described in the
17 dispatch, and I also saw a motorcycle on the sidewalk. The
18 vehicles were both facing northbound at about the approximate
19 address that was on the dispatch, and I viewed it from behind,
20 so I was also facing northbound.

21 Q. We've heard from Officer Montoya generally describing what
22 officers saw and the contact with the Defendant. Did you
23 ultimately -- did you go into this trailer?

24 A. During the course of the investigation of the call, I did
25 enter the trailer at some point, yes.

1 Q. Okay, let's talk about that. What reason did you have to
2 go into the trailer initially?

3 A. Initially, the subject that we were dealing with had asked
4 for his shirt, and the other officers and I said, "Okay, so you
5 want us to get your shirt from inside the trailer?" So I
6 stepped in to get his shirt. While I was in there, just a step
7 or two in, I can't remember if it was the Defendant or if it
8 was one of the other officers who said, can you also get the
9 boots for him.

10 Q. So when you asked, "Do you want us to get your shirt for
11 you," do you remember what the man said?

12 A. I remember he did say, "Yes."

13 Q. Okay. So you went initially inside to get a shirt and
14 then shortly thereafter boots?

15 A. Yes. While in there, I picked up a shirt and I also
16 brought boots out. I was in there just momentarily.

17 Q. Approximately how long were you in there to get the shirt
18 and boots?

19 A. Possibly less than 20 seconds. Approximately.

20 Q. After you had the boots and shirt in hand, what did you
21 do?

22 A. Walked right back out of the trailer and either handed to
23 him or set them on the ground next to the Defendant.

24 Q. Okay. Did you ever enter the trailer again?

25 A. Yes.

1 Q. Why was that?

2 A. I can't remember the amount of minutes, if it was a span
3 of a few minutes later, but it was determined that this
4 Defendant was going to be placed under arrest, and as the
5 assisting officer -- we were trying to see if we could turn
6 possession of the vehicle and camper that was connected to the
7 vehicle, the trailer, over to someone with the Defendant's
8 permission, and he said we could turn that over to his wife.
9 We asked, "Can we call your wife?" And he did not know her
10 number. So he told us, "Her number is in my phone," which is
11 back inside the camper and the trailer, and I said, "Can I get
12 your phone out of the camper and then we'll be able to get her
13 number to call?" And he said, "Yes." And he tried to describe
14 to me where his phone would be inside the trailer.

15 Q. Okay. What did you then do?

16 A. I then stepped in to try to look for the telephone in the
17 areas he told me. He said it would be on the bed, he said it
18 might be on the nightstand. Initially, it wasn't seen right
19 there in plain sight.

20 Q. You didn't see anything where he had described it might
21 be?

22 A. Correct.

23 Q. Okay. What did you do?

24 A. I stepped back out of the trailer. It was also at about
25 that moment that, understanding from Officer Foster, that he

1 was going to place the handcuffs on the Defendant, so I stepped
2 out to get myself on the ground in case any assistance would be
3 necessary. At about the same time, I was also trying to
4 clarify if the phone could be anywhere else, and he said, "No,
5 it should be there on the bed," or like I said, maybe the
6 nightstand. So it should be in that general bed area. And the
7 bed area is immediately next to the door that I entered
8 through.

9 Q. When you say you were trying to clarify, you were asking
10 him, again, where the phone was?

11 A. Yes.

12 Q. And he, again, told you the same thing, which was?

13 A. That it should be in that area by the bed, or not far from
14 the bed.

15 Q. All right. So what did you do?

16 A. As I stepped back in, right there at the bed, which is
17 right by the door, I moved the sheets or blanket and I did see
18 a jacket. I lifted the jacket up and I immediately see the
19 phone in the interior jacket pocket.

20 Q. When you saw the phone in the interior jacket pocket, did
21 you see anything else?

22 A. Yes. As I picked up the jacket, under the jacket, not in
23 a pocket, but under the jacket I see what I recognize to be a
24 firearm. It looked to be a dark color. From my training and
25 experience, I recognized that as a handgun, also known as a

1 possible pistol.

2 Q. Did you retrieve that firearm?

3 A. No. I retrieved the telephone and put the jacket back
4 down, and went out to ask how to get the phone number out.

5 Q. Was the firearm of any significance to you at that point?

6 A. No. I was trying to get the phone number out.

7 Q. Okay. So you took the phone back outside. What did you
8 do?

9 A. We were trying to -- after we retrieved the number, I
10 tried calling his wife many times. He showed me where the
11 number was. I tried dialing many times. I know initially I
12 was not getting an answer. I can't remember the span of time
13 going by, but it was going to get to a point where the other
14 officers needed to leave to go process paperwork for that
15 arrest. When someone is arrested, we need to secure their
16 vehicle, most likely with a tow company, and I was directed,
17 then, by the other officers to stay there and see if I could
18 get ahold of the wife maybe in a few more minutes, or if not,
19 then I would have to start the tow truck. And the odds were
20 very high, since I wasn't getting ahold of someone in a few
21 minutes, to start a tow.

22 Q. So Officer Montoya and Officer Foster left with the
23 Defendant after he had been placed under arrest, but you stayed
24 on the scene, correct?

25 A. Yes.

1 Q. And your purpose there was to?

2 A. Turn over the vehicle either to a tow company or to the
3 wife, which we were given permission by the Defendant.

4 Q. Okay. If you had never been in contact with the wife or
5 anybody else to come move the vehicle, what would have
6 happened?

7 A. We would have towed the vehicle and the connected trailer.

8 Q. If you had had to tow the vehicle, what process would you
9 have had to follow before that?

10 A. Our procedures with our agency are to do an inventory
11 search, and we are to secure certain things, to include
12 firearms, in a tow search, tow inventory search, for
13 safekeeping. That way they are secured in the police
14 department for safekeeping rather than just being in a tow
15 yard.

16 Q. Would an inventory search include things like looking in
17 clothing and securing clothing that was on a bed inside the
18 trailer?

19 A. Yes. Inventory searches are very -- we try to make a very
20 detailed list.

21 Q. Okay. In your training and experience, would you have
22 located that firearm during an inventory search?

23 A. Yes.

24 MR. OUTLER: Your Honor, at this point I'd like to
25 play the portions of the lapel video from Officer Chavez.

1 THE COURT: Okay, you may proceed.

2 (Whereupon Officer Chavez's Lapel video played)

3 BY MR. OUTLER:

4 Q. Officer Chavez, having viewed that, can you confirm for
5 the Court that that is, in fact, your lapel video?

6 A. Yes, that was my lapel video.

7 MR. OUTLER: I move admission of Officer Chavez's
8 lapel video.

9 THE COURT: Any objection?

10 MS. RIVAS: No, Your Honor.

11 THE COURT: It's admitted.

12 (Government Exhibit No. 5 admitted.)

13 BY MR. OUTLER:

14 Q. Officer Chavez, did we watch the portions of your video
15 that captured all of your entries into the trailer and your
16 conversations with the man who was there?

17 A. Yes. If there was any other entry -- like, I think I was
18 handed an item to put back in. We were going to leave some of
19 his property there that might have been in his pockets. So I
20 can't remember -- there could have been another, like, just
21 placing those items back in or something.

22 Q. Okay. Having watched this, is there anything you want to
23 clarify or add to your testimony from before?

24 A. No. I think the video showed the stuff that we've been
25 talking about now.

1 Q. Okay, thank you.

2 THE COURT: Thank you, Your Honor. Pass the witness.

3 CROSS-EXAMINATION

4 BY MS. RIVAS:

5 Q. Good morning.

6 A. Good morning.

7 Q. Officer, when you asked about the phone -- we just heard
8 your voice on the video. You asked whether his phone might be
9 in the nightstand?

10 A. Yes, I think I questioned, is it the nightstand, or asking
11 where it was, yes.

12 Q. And you asked whether it was a black phone?

13 A. Yes, I asked a description of it.

14 Q. "Next to," and you didn't finish that sentence.

15 A. There was a sentence I didn't finish?

16 Q. Yes. Do you remember that?

17 A. That may be --

18 Q. Do you remember not finishing that sentence?

19 A. I think I remember seeing that on the video now.

20 Otherwise, I can't remember. Without -- if I wouldn't have
21 watched the video, I probably wouldn't have remembered.

22 Q. You asked whether it was in a backpack?

23 A. I did ask that question. I just saw that now, yes.

24 Q. And whether she would have a phone?

25 A. Yes, I asked that also on this video, if his wife may have

1 had his phone, or if she had her own.

2 Q. So that's -- I'm counting approximately six questions.

3 A. That could be the count, yes. I haven't counted it
4 myself. It may be.

5 Q. And when you asked those questions, Officer Foster was
6 handcuffing Mr. Dunsworth?

7 A. It looked to be about going on at the same time on the
8 video.

9 Q. And the phone wasn't located in any of those places that
10 you asked about?

11 A. Such as the nightstand, on the floor, or visibly on the
12 bed?

13 Q. Yes.

14 A. No.

15 Q. Thank you. We also heard, regarding his wife, Sharon
16 Dunsworth, he told you, or he told the officers that she would
17 be right back?

18 A. Yes. He expected her back, as far as we understood.

19 That's what he was telling us.

20 Q. You also were curious about possibly releasing the trailer
21 to his sister who lived a few blocks away?

22 A. I can't remember right now without hearing on the video.
23 It does sound a little familiar, that I think we were
24 researching other ideas of how we could get the trailer to
25 someone that could take responsibility for it.

1 Q. If I played that for you, would that maybe refresh your
2 memory?

3 A. If I'm asking him who I could release the trailer to?

4 Q. Right.

5 A. It may refresh my memory, yes.

6 (Whereupon Officer Chavez's Lapel video played)

7 BY MS. RIVAS:

8 Q. Does that refresh your memory?

9 A. Yes. I was trying to do research to see if he did have
10 other family that could possibly get the camper for him.

11 Q. Thank you. And in this case, the trailer was not towed?

12 A. It was not towed, no.

13 Q. And it was not inventoried?

14 A. No.

15 MS. RIVAS: I have no other questions, Your Honor.

16 THE COURT: Is there redirect?

17 MR. OUTLER: Briefly, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. OUTLER:

20 Q. Officer Chavez, you already answered that when you first
21 saw that firearm, you did not retrieve it; is that correct?

22 A. Correct.

23 Q. You left it where it was?

24 A. Yes.

25 Q. Eventually the firearm was retrieved, correct?

1 A. Yes.

2 Q. And why was that?

3 A. When the other officers were going to leave to the police
4 station with the Defendant, and we had already been on scene
5 quite a while and the wife still was not back, even though
6 there was a chance she was going to come back and I was going
7 to give it a few more attempts while I waited, I was probably
8 moments away from calling for a tow truck. So as I said
9 earlier, our procedure then is to start to secure things.

10 As I said now, an inventory wasn't done, but I was
11 expecting to probably do one very soon since family had not
12 showed up yet and that firearm had to be secure. And the
13 primary officers were going to start that process.

14 Q. Is it standard procedure to secure firearms, particularly
15 during an inventory procedure?

16 A. Yes. When a vehicle is towed, even on traffic stops or
17 other stops, if a vehicle is going to be towed away, we do
18 secure firearms rather than letting them just sit in the
19 vehicle and go into the tow yard.

20 Q. At that point, was the firearm evidence of any crime in
21 your mind?

22 A. No. It was going to be for safekeeping since the vehicle
23 was -- I thought I was moments away from starting a tow, and
24 then the family member showed up, or the wife.

25 MR. OUTLER: Thank you, Your Honor. That's all I

1 have.

2 THE COURT: Are there any other questions of this
3 witness?

4 MS. RIVAS: Your Honor, if I may, quickly.

5 THE COURT: Sure.

6 RECROSS-EXAMINATION

7 BY MS. RIVAS:

8 Q. Officer Chavez, you didn't have a discussion with Officer
9 Montoya that there was a gun in the vehicle?

10 A. I would have to refresh my memory on that, on what we
11 discussed. I know on the video we just saw now, it did not
12 appear that that was discussed at that point, but I know later
13 on as they were about to leave for the substation, we
14 communicated that, because as I said, we were going to have to
15 make that safe with the high possibility of a tow truck coming.

16 Q. And didn't he say, it depends on his criminal history?
17 Didn't you confirm his criminal history before Mr. Dunsworth
18 was taken to the substation?

19 A. I can't remember at what point his criminal history was
20 confirmed, or to what detail. We know that he had a warrant
21 for his arrest, as a wanted person on scene there. I can't
22 remember to what extent other resources were done at the scene.

23 Q. During your recording of this incident, did you ever stop
24 the audio?

25 A. I can't remember right now. That would have to be

1 researched through our video. Maybe the video would show that.

2 I can't remember.

3 Q. If you did, why would you stop the audio?

4 A. Sometimes audio is stopped to discuss tactics among each
5 other, with officers. That way that's not viewed later on in
6 court cases, to see police tactics. Or just even to hear
7 tactics in front of the Defendant or the subject that we're
8 dealing with. So sometimes the audio can be stopped on that,
9 even though your attempt is to not let somebody nearby hear
10 your tactics.

11 Q. Did you discuss tactics with any of the officers that day?

12 A. I can't remember now. I do remember discussing some
13 tactics as we walked up. That refreshed myself, in the video,
14 about where we were going to stand and position ourselves on
15 our approach. Other parts I can't remember right now.

16 Q. I think that shortly after this, you turned off the audio.
17 May I play it for you?

18 MR. OUTLER: Your Honor, objection; relevance. What
19 difference does it make?

20 MS. RIVAS: Your Honor, the officer just testified
21 that basically he was going to retrieve the handgun as a
22 procedure and not as an investigation into a crime, and I think
23 that the audio would show that, in fact, the gun most likely
24 was retrieved as part of his investigation into a crime.

25 THE COURT: I'll allow it. Go ahead.

1 MS. RIVAS: Thank you.

2 (Whereupon Officer Chavez's Lapel video played)

3 BY MS. RIVAS:

4 Q. Do you hear any audio?

5 A. No, I don't hear audio.

6 Q. Do you remember what you were discussing?

7 A. No, I don't remember.

8 MS. RIVAS: I don't have any other questions, Your
9 Honor.

10 MR. OUTLER: Nothing further, Your Honor. Thank you.

11 THE COURT: Let me ask, Officer Chavez, were you the
12 one who retrieved the handgun?

13 THE WITNESS: I would have to be reminded on the
14 video. I can't remember at this point, without refreshing from
15 the video, which one of us, then, finally does retrieve it to
16 take it to the police station. I don't remember.

17 THE COURT: And that's fine. The Defendant was being
18 placed in cuffs on misdemeanor warrants?

19 THE WITNESS: Yes, from my remembering. My memory is
20 he was under arrest for misdemeanor warrants.

21 THE COURT: At some point, if you know, and if you
22 don't, then just indicate you don't, but at some point, did you
23 learn that the Defendant had a prior felony conviction?

24 THE WITNESS: At some point in that day, I did learn
25 that. I can't remember what time of the day I did.

1 THE COURT: Okay. Do you know when you learned that
2 information, was that before or after the handgun was
3 retrieved?

4 THE WITNESS: It was later in the day. Like we said,
5 I know at the scene one of us retrieved it, because they were
6 going to take it -- they, as in the other officers or myself,
7 were going to place it in evidence as a safekeeping measure and
8 that was the reason it was retrieved out of that camper.

9 THE COURT: Again, what I'm getting at, and again, if
10 you don't know, but was the handgun retrieved as a safekeeping
11 measure, or was it retrieved because the police officers
12 learned that the Defendant had a prior felony conviction?

13 THE WITNESS: It was taken as a safekeeping measure.
14 At that point on the scene, I know we didn't know about any
15 felony convictions at that point. I don't know -- as I just
16 testified now, or moments ago, I didn't know the extent of his
17 criminal history on scene, but I know that confirmation of that
18 did come later on at the police station that day, of his felony
19 record.

20 THE COURT: Okay. Did defense counsel have any
21 questions in light of my questions?

22 MS. RIVAS: No, Your Honor.

23 MR. OUTLER: Nothing further, Your Honor. Thank you.

24 THE COURT: May the witness be excused?

25 MR. OUTLER: Yes.

1 THE COURT: You're welcome to leave, or if you want,
2 you can remain in the courtroom.

3 THE WITNESS: Thank you.

4 THE COURT: The Government may call the next witness.

5 MR. OUTLER: Thank you, Your Honor. The final
6 witness is Officer Zakkery Foster.

7 MR. GARCIA: Good morning, sir. Please raise your
8 right hand.

9 (ZAKKERY FOSTER, GOVERNMENT WITNESS, SWORN)

10 MR. GARCIA: Please have a seat and state your full
11 name for the record.

12 THE WITNESS: Officer Zakkery Foster.

13 DIRECT EXAMINATION

14 BY MR. OUTLER:

15 Q. Officer Foster, would you spell your first name, please?

16 A. Z-a-k-k-e-r-y.

17 Q. And Foster is F-o-s-t-e-r?

18 A. Correct.

19 Q. How long have you been with the Albuquerque Police
20 Department?

21 A. Approximately two years.

22 Q. So on June 25, 2018, was that shortly after you started as
23 an officer?

24 A. Correct.

25 Q. And you were on training that day, correct?

1 A. On-the-job training, yes.

2 Q. Sitting here today, do you remember your original contact
3 and eventual arrest of a man named, or who identified himself
4 as Daniel Dunsworth?

5 A. Correct, yes.

6 Q. You were, in fact, the arresting officer that day?

7 A. Yes, I was.

8 Q. All right. Describe to us why you went to that particular
9 scene.

10 A. It was a call for service about an RV parked in front of
11 one of the businesses out on the street, and they just
12 requested that we have it removed.

13 Q. Okay. And why would it be important to remove that kind
14 of vehicle?

15 A. At the time, it just seemed like it was a nuisance to the
16 business. That's the information we had gotten on the call.
17 Until I got there, that's the information I had.

18 Q. Okay. When you arrived, what did you see?

19 A. I saw an RV parked on I believe the east side of, I'm not
20 sure of the street name, with a motorcycle parked and blocking
21 the sidewalk along with, I think, a ladder. We had checked the
22 information on the RV, and the registered owner of the RV
23 possibly had a warrant.

24 Q. Do you remember the name of the registered owner?

25 A. Daniel Dunsworth.

1 Q. So at this point, you've seen the RV parked on the street,
2 you've run the plate, and the registration comes back to Daniel
3 Dunsworth?

4 A. Correct.

5 Q. And you note from your research that a man named Daniel
6 Dunsworth has warrants outstanding?

7 A. Yes.

8 Q. What did you do?

9 A. We then decided to walk up to the RV and attempt to
10 contact possibly, if there's someone in it, for the fact that
11 there was a high possibility that we were going to end up
12 towing the vehicle.

13 Q. And why is that?

14 A. Due to the legality of it. It had the motorcycle impeding
15 the sidewalk, as well as we were able to -- I believe it had a
16 bunch of call history previously through our department alone
17 in the area, and it's a common problem in the area that there's
18 abandoned RVs, there's people sleeping in them. I mean, we've
19 had plenty of welfare checks in the area.

20 so typically we tow those vehicles, or we try to work with
21 someone, try to contact them to get them to move it to the
22 proper location, like an RV park or at a residence where it
23 could stay, which it wasn't parked in front of a residence. It
24 was more of like a business area.

25 Q. So is it fair to say that the outcome that you needed to

1 achieve as police officers was to have this vehicle moved,

2 whether you moved it or somebody else moved it?

3 A. Correct.

4 Q. All right. As you approached the vehicle, what did you
5 see?

6 A. I saw that the back I think passenger side door, rear
7 door, was cracked open, the motorcycle and the ladder were
8 completely blocking the sidewalk, and that was it at the time.

9 Q. Did you see inside that door?

10 A. I couldn't necessarily see inside of it. I know it was
11 open, but it wasn't completely open. It was just kind of up
12 against the RV, itself. But it looked like either someone was
13 in there or had been in there.

14 Q. Okay. Could you see in through any of the windows?

15 A. I don't believe I looked through any of the windows at the
16 time. One of the other officers may have.

17 Q. You don't recall being able to see through any of the
18 windows?

19 A. I don't recall, myself.

20 Q. So at this point, you're not sure whether anybody is
21 inside the trailer?

22 A. Correct.

23 Q. What did you do?

24 A. I attempted to contact. I knocked on the door. No one
25 answered door and I didn't hear anything inside. I knocked a

1 second time and announced, I believe, Albuquerque Police.
2 still no answer. And I believe Officer Montoya may have opened
3 the door at that time and saw a male laying in the bed. I
4 think he asked him to step outside, or said, "would you come
5 outside and talk to us real quick." The male exited the RV --
6 or, before he asked if he could put some pants on. I guess he
7 grabbed some pants that were directly on the floor in front of
8 him, put the pants on, and he exited the RV without a shirt.

9 I began talking to him. Eventually I had asked him who he
10 was, and he identified himself as Daniel Dunsworth, which was
11 the registered owner and who I was under the impression at the
12 time had warrants out for his arrest. I asked him if he knew
13 if he had any warrants, to which he specified that he did. I
14 then got some basic information I needed to check through the
15 National Crime Information Center to check and see if those
16 warrants were valid. They were.

17 During this interaction, Officer Chavez I believe asked
18 him if he wanted a shirt, to which Daniel stated, yes. He
19 asked him if he could enter the RV to grab him some clothing
20 items the first time, to which the male identified, or Daniel
21 at the time, identified, yes, he can --

22 Q. Let me stop you there. At any point, did you enter the
23 trailer?

24 A. Not that I recall, no.

25 Q. Did you open the door to the trailer?

1 A. No.

2 Q. You mentioned that the man identified himself as Daniel
3 Dunsworth.

4 A. Correct.

5 Q. And did he show you an identification for Daniel
6 Dunsworth?

7 A. Yes.

8 Q. And that's the person that you ran through your police
9 system to determine whether he had any warrants; is that right?

10 A. Correct.

11 Q. Did you ask the man whether he had any warrants?

12 A. I did, to which he stated, yes. He said possibly, or I
13 might, something along those lines, I believe.

14 Q. Did you immediately get any information back from your
15 police system, or did you have to wait for that?

16 A. There's a small time delay with whatever process they run
17 up there. After I give them the information, and they go off a
18 name, first name, last name, date of birth kind of thing, it's
19 a couple of seconds, sometimes a few minutes. And then once
20 they confirm it, they ask if we're out with that individual and
21 if we would like to confirm those warrants, which I did,
22 because I was under the impression I was out with that specific
23 individual due to the information provided to me.

24 Q. Okay. Did you, in fact, hear back from your police
25 reporting system?

1 A. Yes.

2 Q. And what was that?

3 A. That the individual had warrants.

4 Q. What did you do then?

5 A. I then allowed the individual to finish getting dressed,
6 as he was provided a shirt and some boots. At that point, I
7 knew he was under arrest. I was kind of waiting for him to get
8 fully dressed. I advised him that, yes, he does have some
9 warrants and that he would be going to jail. He was kind of
10 hesitant, asking if they're misdemeanors, I believe, and if we
11 could work with him, or something along those lines. I just
12 said that we're just going to take care of these today and he
13 should probably be out pretty soon. He got dressed, put his
14 boots on, and then I placed him under arrest.

15 Q. All right. Officer Foster, after you placed the man under
16 arrest, did you take him back to the police substation?

17 A. I did.

18 Q. Was Officer Montoya with you?

19 A. Correct.

20 Q. What sort of processing did you do once you took the man
21 back to the station?

22 A. Our paperwork, the report. We had to -- I guess due to
23 what the other officers had found and what I had found during
24 my search incident to the arrest, we now had a higher set of
25 charges. It was no longer just the warrant.

1 Q. What do you mean by a higher set of charges?

2 A. Possession of drug paraphernalia was found in the
3 individual's pants while I was doing my search incident to the
4 arrest, as well as I believe Officer Chavez, I'm not sure
5 exactly, but there was a firearm found within the RV.

6 Q. During your processing of the man, did you at any time --
7 did you continue to understand that his name was Daniel
8 Dunsworth?

9 A. To my understanding, up until that point, yes.

10 Q. And when you were running a background check on this man,
11 were you running a background check on a man named Daniel
12 Dunsworth?

13 A. Yes.

14 Q. So all the information you had as you were arresting and
15 processing this person was that he was Daniel Dunsworth; is
16 that correct?

17 A. Correct. Yeah, I mean, the photo that -- we have to do a
18 felony sup out. It's a lot of information, and it was almost
19 identical to the male I was out with. It looked very much like
20 him.

21 Q. You had no knowledge that he might be somebody other than
22 Daniel Dunsworth?

23 A. Absolutely not.

24 MR. OUTLER: Your Honor, at this point I'd like to
25 play Officer Foster's lapel video.

1 THE COURT: Okay.

2 (Whereupon Officer Foster's Lapel Video played)

3 BY MR. OUTLER:

4 Q. Officer Foster, do you recall during this search incident
5 to an arrest if you found anything on Mr. Dunsworth's person?

6 A. It's my recollection that it was just a white crystallly
7 substance that was later tested with a methamphetamine test kit
8 that came back positive for meth.

9 Q. All right. You said earlier that you had eventually run a
10 III background check on the Defendant; is that correct?

11 A. Correct.

12 Q. Was that back at the station or at the scene?

13 A. It'll be back at the substation.

14 MR. OUTLER: Thank you, Your Honor. I pass the
15 witness.

16 THE COURT: What did you call it, a triple what?

17 MR. OUTLER: Triple I; III.

18 BY MR. OUTLER:

19 Q. Do you know what that stands for, Officer?

20 A. I don't recall. It's not very often that we check those,
21 and they're with ATF.

22 Q. But that's what you call it, right?

23 A. Correct, the III. I learned about it through my training
24 officer that day.

25 Q. And that's essentially a criminal background check for an

1 particular individual?

2 A. A more in-depth, correct.

3 MR. OUTLER: Thank you, Your Honor. Pass the
4 witness.

5 THE COURT: Counsel may cross.

6 MS. RIVAS: Thank you.

7 CROSS-EXAMINATION

8 BY MS. RIVAS:

9 Q. Good morning.

10 A. Good morning.

11 Q. You didn't run the name Robert Dunsworth that morning?

12 A. No, I did not.

13 Q. You don't know if he did or did not have a warrant?

14 A. Robert Dunsworth?

15 Q. Right.

16 A. Correct.

17 Q. The warrant for Daniel Dunsworth was a traffic ticket?

18 A. To my best recollection, it was misdemeanor traffic
19 tickets.

20 Q. And for traffic tickets, persons aren't usually arrested?

21 A. They are, typically. I typically saw it and I typically
22 did at that time. It's kind of at the officer's discretion,
23 depending on -- it's a discretion kind of thing.

24 Q. You don't know if whoever got those tickets was arrested
25 that day?

1 A. I was under the impression of who I was arresting had
2 those warrants.

3 Q. But you don't know who received those tickets that day?

4 A. Who received them that day? I was under the impression
5 that it was Daniel Dunsworth.

6 Q. So you don't know who the person was that got those
7 tickets that day? Do you have personal knowledge?

8 A. Do I have personal knowledge?

9 Q. Yes, of who received those tickets.

10 A. That day?

11 Q. Right.

12 A. Whoever received them was the one that got the warrants,
13 and that's who I was under the impression I was out with that
14 day.

15 Q. But you don't know who that was?

16 A. Daniel Dunsworth.

17 Q. Did you arrest that person?

18 A. At the time?

19 Q. Did you issue those tickets back then?

20 A. Did I issue them?

21 Q. In Gallup.

22 A. No. But whoever, whichever officer it was, made contact
23 with a Daniel Dunsworth and gave him citations for that.

24 Mr. Daniel Dunsworth didn't show up to court, so he was given
25 warrants.

1 Q. You don't know if it was Daniel or Robert?

2 A. If it was a Robert, it would most likely -- if he was
3 identified or had a driver's license of a Robert, his name
4 would be on those citations.

5 Q. But you don't know?

6 A. I wasn't in the officer's shoes.

7 Q. Okay, thank you.

8 You didn't know if anyone was in the trailer that morning?

9 A. I did not.

10 Q. You said that you knocked on the door, and we saw that on
11 the video. So, was your intention to knock on the door until
12 someone answered?

13 A. I would try multiple attempts, yes, in the hopes of
14 someone possibly answering.

15 Q. You were going to knock until someone came to the door?

16 A. I was going to attempt to. After so many attempts, then
17 we would be under the impression that no one was present and we
18 would have to tow the vehicle.

19 Q. You had never met the person that you saw in the trailer
20 that day?

21 A. I had not.

22 Q. When Officer Montoya opened the door, you didn't have a
23 search warrant for that trailer?

24 A. No.

25 Q. In viewing the video, do you remember Mr. Dunsworth

1 asking, in his words, why did you all come strong at him?

2 A. Correct.

3 Q. And Officer Chavez, during the questions he was asking

4 Mr. Dunsworth regarding where the phone might be, you were

5 handcuffing Mr. Dunsworth at the moment?

6 A. I believe so.

7 Q. Mr. Dunsworth was not driving the car or the trailer or

8 any vehicle at the time?

9 A. It was not in motion.

10 Q. And you have legally, under the City code, you have the

11 option of just tagging the car?

12 A. We could.

13 Q. But you didn't do that here?

14 A. No.

15 Q. And Mr. Dunsworth did say that Sharon Dunsworth was on her

16 way back?

17 A. Correct, later in the video.

18 Q. And you discussed possibly reaching out to Mr. Dunsworth's

19 sister, who lived a few blocks away off of Texas?

20 A. Correct, to see if we could get the vehicle moved.

21 Q. And in this case, you did not tow the vehicle?

22 A. No.

23 Q. And you did not conduct an inventory search?

24 A. I did not.

25 MS. RIVAS: I have no other questions, Your Honor.

1 THE COURT: Is there redirect?

2 MR. OUTLER: Nothing further, Your Honor.

3 THE COURT: So I'm clear, the warrants that you
4 arrested him on, were those failure to appear warrants, if you
5 know?

6 THE WITNESS: To my best recollection, yes. If you
7 receive a citation and you don't show up, then I was under the
8 impression that it was a failure to appear.

9 THE COURT: Okay. Now, you were operating under the
10 assumption that the gentleman you were having contact with was
11 named Daniel Dunsworth, correct?

12 THE WITNESS: Absolutely.

13 THE COURT: And at some point, did you learn that the
14 gentleman sitting in court is Robert Dunsworth?

15 THE WITNESS: Not that day.

16 THE COURT: Not that day?

17 THE WITNESS: Not that day.

18 THE COURT: Okay. Did you have any knowledge about
19 the handgun being taken into possession by the officers, or
20 retrieved?

21 THE WITNESS: After the fact, once it was found by
22 the other officers. I was staying with Mr. Dunsworth at the
23 time since I was the arresting officer. I believe I was doing
24 a search while other officers I believe had entered and saw it
25 in plain view after entering the RV. I was not the one that

1 had found the firearm.

2 THE COURT: Do you know who retrieved the firearm?

3 THE WITNESS: I believe it was Officer Chavez.

4 THE COURT: Do you know why the firearm was being
5 retrieved?

6 THE WITNESS: Due to it being -- I believe it was
7 sitting somewhere in the RV. It was more of just a safety
8 measure at that point. We had someone else coming to pick up
9 the vehicle, and I'm not sure what -- I'm not too sure. I
10 don't recall.

11 THE COURT: Well, you understand today the
12 Defendant's charged with being a felon in possession?

13 THE WITNESS: Correct.

14 THE COURT: At the time that you had the interaction
15 with him and you were placing him under arrest, to your
16 knowledge, was the firearm being retrieved as a safety measure
17 or because you learned that the Defendant had a prior felony
18 conviction?

19 THE WITNESS: When we possibly looked deeper into --
20 I'm not sure if I had checked any previous history, arrest
21 history or anything. So at that moment, the possession of the
22 firearm, I'm not sure if we had just taken possession of it and
23 then did some further digging and then found out that there
24 were felonies present.

25 THE COURT: You weren't the one doing the, as you

1 said, further digging?

2 THE WITNESS: Correct.

3 THE COURT: Now, does defense counsel have any
4 questions in light of my questions?

5 MS. RIVAS: Possibly, Your Honor, if I could have one
6 minute. No, Your Honor.

7 THE COURT: Counsel for the United States?

8 MR. OUTLER: No, Your Honor.

9 THE COURT: All right. May the witness be excused?

10 MR. OUTLER: Yes.

11 THE COURT: Thank you. You may step down.

12 THE WITNESS: Thank you, Your Honor.

13 THE COURT: Is there any further evidence?

14 MR. OUTLER: No further evidence from the United
15 States.

16 THE COURT: What's counsel's preference? I've got a
17 lunch meeting today. Do you want to make closing arguments, or
18 do you want to come back after lunch? In other words, do you
19 want to make closing arguments now or come back after lunch?

20 MR. OUTLER: The United States is prepared to proceed
21 however it pleases the Court. I don't anticipate we're going
22 to take very much time in argument.

23 MS. RIVAS: We agree, Your Honor.

24 THE COURT: Okay. You may proceed, then.

25 MR. OUTLER: Your Honor, the defense has raised the

1 question of Officer Montoya's original pushing the door open,
2 and then later Officer Chavez's entry into the trailer looking
3 for the phone, and eventually finding the phone next to a
4 firearm, both as Constitutional violations. With respect,
5 neither one was.

6 officer Montoya's original pushing of the door open,
7 I could not find a case that would squarely address this on
8 point, but the United States submits that that wasn't a search.
9 The officer was not trying to investigate a crime, he was not
10 looking for a particular person related to a crime at that
11 point, his entire mindset was, this vehicle needs to be moved,
12 at this point I don't believe somebody is here who can move it,
13 so I'm going to have to tow it, but I'm going to take this last
14 step, because the door is already open, just to confirm that
15 there is, in fact, nobody here. So he opens that door just to
16 take that final step to find out if somebody is present before
17 he moves on to the next step, which would be to tow the
18 vehicle. In fact, he finds somebody there, and he doesn't
19 enter the vehicle. He just asks that person to come out. And
20 that's the end of what the defense is characterizing as an
21 illegal search or illegal seizure of that person.

22 If after knocking and announcing the man had come to
23 the door, they would have asked him the same thing, to step
24 out. They would have taken his information. Based on the
25 information he provided, they would have determined the same

1 thing, that he had warrants, and they would have placed him
2 under arrest. And they would have still been in the same
3 position that they were before, which is, we have to move this
4 vehicle, this vehicle has to be moved. Officers cannot leave
5 the scene until some arrangement has been made to move this
6 vehicle, whether that's by towing or by somebody else who is
7 allowed, and capable of moving it, moving it. So in that
8 respect, the United States submits there was no illegal entry
9 or search or seizure into the vehicle when Officer Montoya
10 pushed the door open.

11 But even if it was, the man would have been located
12 eventually if he had either come to the door on his own or if
13 the officers had to tow that vehicle. There's no question that
14 they would have had to enter that vehicle to inventory it, and
15 if there had been a person in there, they would have found that
16 person.

17 The second, according to the defense, problematic
18 entry into the vehicle was Officer Chavez's entry to locate the
19 phone. As the Court saw clearly from the video, that was a
20 permissive entry. They initially asked the person, asked the
21 man, if they could contact his wife; he said, yes. They asked
22 him for the phone number; he didn't remember it. They asked
23 him where the number was; it was on his phone. Where was his
24 phone? It's in the vehicle. May we go inside and get it?
25 Yes. That's the only reason, and that's the entire reason for

1 officer Chavez's entry into the vehicle to look for the phone.

2 The defense further characterizes Officer Chavez's
3 entry into the trailer as beyond the scope of just looking for
4 the phone. To read the brief, it sounds like Officer Chavez
5 ravaged the trailer looking for anything but the phone. But as
6 the court could see from the videos, his search was restrained,
7 it was exactly in the areas that the Defendant, such as he
8 could, described where the phone might be. At one point,
9 officer Chavez actually came back out of the vehicle and asked
10 for clarification. "You said the phone was near the bed, could
11 it be on the nightstand? Could it be in the backpack?" He
12 wasn't getting any clear information from the man about where
13 the phone was, except for the vague impression that it's
14 somewhere near the bed. So Officer Chavez goes back in and
15 then finds the phone, in fact, on the bed underneath a jacket
16 next to a firearm. That search is not a Constitutional
17 violation. It was clearly permissive. And the evidence in
18 question here was located during that permissive search.

19 But even if that were a problematic search, even if
20 that were somehow a violation of the Constitution, if the man
21 had not given clear permission to go inside, the firearm would
22 have been located during an inventory search subject to tow.
23 The fact that the man had been placed under arrest only
24 increased the possibility or the likelihood that this car would
25 have to be towed. It certainly would still have to be moved,

1 and now the man, the one person who is there and capable of
2 moving it, is under arrest and is going to be taken away.

3 So it's even more likely at this point that there's
4 going to be a towing process. This is the officers' state of
5 mind at this point. A towing is likely the outcome of this.
6 Incident to towing would be an inventory search, and the
7 evidence that was found that ultimately implicates the
8 Defendant in a Federal court case would have been found during
9 that search.

10 THE COURT: Ms. Rivas.

11 MS. RIVAS: Thank you, Your Honor.

12 Your Honor, the officers approached this trailer
13 without knowing who was in there, or if anyone was in there.
14 The officers impermissibly opened the door and immediately
15 seized Mr. Dunsworth by asking him to step out. He did have an
16 expectation of --

17 THE COURT: How is that improper, that initial part?
18 I mean, if someone is in there, then they're not going to have
19 to tow it. I mean, it strikes me as pretty reasonable for them
20 to knock on the trailer door and see if someone is in there.

21 MS. RIVAS: Your Honor, I think it's reasonable to
22 knock on the door. What's unreasonable is for the officers to
23 open the door and immediately ask him to step out.

24 THE COURT: Wasn't their testimony that the door was
25 partially open?

1 MS. RIVAS: Your Honor, the Court can see from our
2 Exhibits B, C and D that the door was not partially open, and
3 it was impossible for anyone with normal human vision to be
4 able to see through that door and see that there was anyone in
5 there.

6 Your Honor, the officers immediately seized --

7 THE COURT: Let me ask you this: Exhibit B is
8 admitted. What's your representation as to when the photo was
9 taken?

10 MS. RIVAS: Your Honor, that is a screenshot, and I
11 believe that I left the time at the bottom right of the screen
12 capture.

13 THE COURT: It was a screenshot off the video?

14 MS. RIVAS: Yes, it was, Your Honor. Those were
15 screenshots as the officers approached the trailer.

16 Your Honor, Mr. Dunsworth was vulnerable and had an
17 expectation of privacy. He was asleep in his underwear.
18 That's fairly private. Immediately the officer asked him to
19 step out, and Mr. Dunsworth doesn't step out without first
20 asking permission. The officers take control of him right
21 away.

22 He's outside of his trailer with no shoes, no shirt.
23 Officer Montoya starts asking him questions about the bruises
24 on his stomach. If the Court will see from the video,
25 Mr. Dunsworth doesn't say, "Hey, can one of your officers go in

1 there and grab me a shirt?" No, he says, "Can I have a shirt?"
2 And the response is, "My officer can go in there." "Can I have
3 some shoes?"

4 The officers asked Mr. Dunsworth for his information.
5 Had he provided his correct information, I do not believe that
6 any warrants would have come back for him. There would have
7 been no reason to apprehend him.

8 THE COURT: Right, but that's not the officers'
9 fault, is it?

10 MS. RIVAS: No, Your Honor. But that also, I think,
11 creates an issue of whether, as the Government argues, his
12 arrest would have been inevitable and that the trailer would
13 have been towed. They opened the door to the trailer without
14 probable cause, without any exigent circumstances.

15 And regarding the consent, Your Honor, we ask the
16 Court to see that any consent that he gave was not voluntary.
17 There are three officers surrounding him. One is at the
18 entrance of the trailer, and the other two are positioned so
19 that he cannot, in essence, walk away. He's out there with no
20 shirt, no shoes. By Mr. Dunsworth's own words, the Court can
21 hear him say, "why did you come to me all strong?" He feels
22 the power of three police officers asking him all these
23 questions.

24 The questions regarding where the phone might be are
25 one after the other. And not only that, but during those

1 questions, Mr. Dunsworth is being arrested and is being placed
2 in handcuffs. As the Court can see from the video, it's windy,
3 and the officer keeps asking questions. Is it in the
4 nightstand? Is it next to it? Is it on the floor? Is it in a
5 backpack? All those things that Officer Chavez asked, the
6 phone was not found in any of those places.

7 we'd ask the Court to find that a search of that
8 trailer was not inevitable, because it was not towed and it was
9 not inventoried. It's not a hypothetical, this might not be
10 towed and this might not be inventoried, because, in fact --

11 THE COURT: If you look at your Exhibit B, you see a
12 motorcycle that's totally blocking the sidewalk. So there's no
13 way a pedestrian can walk, because you've got a chain link
14 fence on the right side of the photo, you've got the trailer,
15 and you've got a motorcycle there. So when the officers are
16 entering -- I mean, I can't quote it offhand, but I'm positive
17 there's probably some kind of City ordinance that prevents the
18 motorcycle from blocking the sidewalk.

19 And then, the officers were dispatched because I
20 think the testimony was the trailer had been there several
21 days. You can't just park a trailer wherever you want on the
22 side of a street and leave it there. For all the officers
23 knew, the trailer could have been abandoned. If it's abandoned
24 property, they've got to -- I guess I'm having trouble
25 understanding your argument that there's a right of privacy

1 there in terms of you can just park a trailer illegally and
2 just leave it there.

3 MS. RIVAS: Your Honor, what we're saying about the
4 vehicle being parked illegally is, we asked Officer Montoya and
5 he confirmed that towing the vehicle was discretionary. So I
6 think that goes toward what the Government is arguing, that a
7 tow and an inventory would have been inevitable, because they
8 did have the option, they did have the discretion of
9 red-tagging it, as I think Officer Montoya indicated, and
10 trying to somehow reach the owner of the vehicle. But it was
11 not something that had to be done or required, it was
12 discretionary.

13 Your Honor, we also ask that the Court observe,
14 regarding the consent, that the Government has the burden of
15 proving that it was an express consent, and we'd ask the Court
16 to find that Mr. Dunsworth's words of, "It's in there," is not
17 an express consent. The officers didn't ask open-ended
18 questions like, "Hey, is it okay if we go into your trailer to
19 maybe retrieve your phone?" I believe that Officer Montoya
20 said, "Hey, my partner can go in and get the phone." With
21 three officers around him, him sitting on the bench -- I mean,
22 on the curb, about to be arrested, that is not express and is
23 not voluntary.

24 And Your Honor, regarding the issue of the door, I
25 realize that the case we cited, Arellano-Ochoa, had to do with

1 the trailer, but it did confirm a similar situation, which is
2 that there is some expectation of privacy even when it's just a
3 screen door that's closed. And in this case, not only was the
4 screen door closed, the solid wood door was also closed. And
5 as we submit from our exhibits, it was impossible for the
6 officers to have seen that anyone was in there.

7 So for those reasons, Your Honor, we ask that the
8 Court find that the initial approach immediately seized
9 Mr. Dunsworth, that any questions were answered under duress,
10 and that anything that flowed from the initial entrance to the
11 trailer violated Mr. Dunsworth's Constitutional rights.

12 THE COURT: Since the United States has the burden of
13 proof, I'll give you the last word here.

14 MR. OUTLER: Your Honor, just briefly, the defense a
15 number of times kind of characterized the police response to
16 this call for service as heavy-handed, that they were coercive
17 with him, they were pressuring him and peppering him with
18 questions. I think as the Court can see from the videos, it
19 was anything but heavy-handed. If anything, they were overly
20 solicitous and patient with Mr. Dunsworth, trying to find a
21 solution to this problem.

22 It makes a difference that the officers' state of
23 mind throughout this process was that this was an illegally
24 parked vehicle that had to be moved. In the process of
25 figuring out how that was going to be done, they found a person

1 who had outstanding warrants, so they had to arrest that
2 person. But they weren't investigating any further crime at
3 that point. They didn't know there was any further crime at
4 that point. So their state of mind remained, okay, we now have
5 a person under arrest, we already had a reason that the vehicle
6 needed to be moved, now we have another reason the vehicle
7 needs to be moved, and that's where they were in this.

8 We have cited in our brief and attached for the
9 Court's knowledge as Exhibit 8 the City ordinances that this
10 parked RV was violating. These are the reasons why the
11 officers simply couldn't leave that scene without making
12 arrangements for that vehicle to be moved. So if nobody had
13 been found, if nobody had come to the door, if they hadn't
14 found somebody inside, they most definitely would have towed
15 that vehicle, and if they had, they would have inventoried it
16 and found the firearm.

17 THE COURT: Okay. I'll take the matter under
18 advisement and I'll issue a written decision. Probably I'll
19 get it out by the end of this week or early part of next week.

20 Anything further from the United States?

21 MR. OUTLER: Nothing further, Your Honor.

22 THE COURT: Anything further from the defense?

23 MS. RIVAS: No, Your Honor.

24 THE COURT: All right, thank you. We're in recess.

25 (Proceedings adjourned at 11:55 A.M.)

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

)
UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) No. 1:18-CR-03475-WJ
)
ROBERT DUNSWORTH,) Hearing re: Defendant's Motion
) for Suppression of Evidence
) (Doc. 39)
-----)

CERTIFICATE OF OFFICIAL COURT REPORTER

I, Mary K. Loughran, CRR, RPR, New Mexico CCR #65, Federal
Realtime official Court Reporter, in and for the United States
District Court for the District of New Mexico, do hereby
certify that pursuant to Section 753, Title 28, United States
Code, that the foregoing is a true and correct transcript of
the stenographically reported proceedings held in the
above-entitled matter on Tuesday, March 10, 2020, and that the
transcript page format is in conformance with the regulations
of the Judicial Conference of the United States.
Dated this 8th day of April, 2020.

MARY K. LOUGHRAN, CRR, RPR, NM CCR #65
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